



CITY COUNCIL STAFF REPORT

DATE: June 6, 2012

CONSENT CALENDAR

SUBJECT: ACCEPTANCE OF OPERATIONS COVENANTS FROM RBD HOTEL PALM SPRINGS LLC AS OPERATOR OF THE HYATT HOTEL; RIVIERA REINCARNATE LLC AS OPERATOR OF THE RIVIERA HOTEL; AND SYDELL PALM SPRINGS LLC AS OPERATOR OF THE SAGUARO HOTEL; PURSUANT TO THE CITY'S HOTEL OPERATIONS INCENTIVE PROGRAM.

FROM: David H. Ready, City Manager

BY: Thomas J. Wilson, Assistant City Manager

SUMMARY

As a condition of receiving the benefits of the City's Hotel Operations Incentive Program, an operator is required to execute and record an Operations Covenant on the property to ensure that the hotel will be operated and maintained continuously as a hotel consistent with the Hotel Operations Incentive Program. The operators of the RBD Hotel Palm Springs LLC, Riviera Reincarnate LL, and Sydell Palm Springs LLC, have applied for the Program and have agreed to be bound by the proposed Operations Covenant.

RECOMMENDATION:

1. Accept the Operations Covenants between the City and RBD Hotel Palm Springs LLC, Riviera Reincarnate LLC, and Sydell Palm Springs LLC in conjunction with the City's Hotel Operations Incentive Program.

STAFF ANALYSIS:

The City Council adopted Chapter 5.26 of Palm Springs Municipal Code in December, 2007 to provide a Hotel Operations Incentive Program ("Program") for the operation and maintenance of Hotel facilities that enhance the tourist and travel experience for visitors to the City, maximize the use of the City's Convention Center, provide attractive and desirable visitor serving facilities and experiences, and assist the City in achieving its tourism goals.

RBD Hotel Palm Springs LLC, on behalf of its Hyatt Hotel, has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a qualified renovation project under the Program. The Hyatt Hotel is located at 285 N. Palm Canyon Drive, Palm Springs, CA 92262.

Riviera Reincarnate LLC, on behalf of its Riviera Hotel, has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a qualified renovation project under the Program. The Riviera Hotel is located at 1600 N. Indian Canyon Drive, Palm Springs, CA 92262.

Sydell Palm Springs LLC, on behalf of its Saguaro Hotel, has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a qualified renovation project under the Program. The Saguaro Hotel is located at 1800 E. Palm Canyon Drive, Palm Springs, CA 92264.

Consistent with the provisions of the Program, the three hotels, as set forth above, desire to place restrictions upon the use and operation of the hotels, in order to ensure that the properties shall be operated and maintained continuously as hotels available for short-term rentals.

The three hotels, as set forth above, have also agreed in the Covenants to participate in the Palm Springs Convention Center's Committable Rooms Program and provide the City with designated room nights per month for official City use. The City will share a percentage of Transient Occupancy Tax Increment with Owner pursuant to the Program guidelines.


FISCAL IMPACT:

For the Hyatt Hotel, an amount equal to 50% of its transient occupancy tax over the annual base amount of \$908,078.00 will be paid to RBD Hotel Palm Springs LLC for 10 consecutive years.

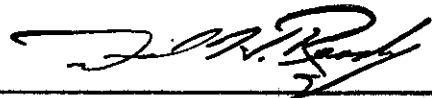
For the Riviera Hotel, an amount equal to 50% of its transient occupancy tax over the annual base amount of \$1,302,039.00 will be paid to Riviera Reincarnate LLC for 10 consecutive years.

For the Saguaro Hotel, an amount equal to 50% of its transient occupancy tax over the annual base amount of \$445,998.00 will be paid to Sydell Palm Springs LLC for 10 consecutive years.

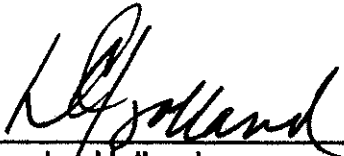
SUBMITTED:



Thomas J. Wilson
Assistant City Manager



David H. Ready
City Manger



Douglas Holland
City Attorney

Attachments: Covenant Agreements

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

THE CITY OF PALM SPRINGS
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attention: City Clerk

(Space Above This Line for Recorder's Office Use Only)

OPERATIONS COVENANT

A6007

THIS OPERATIONS COVENANT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this 1st day of May, 2012, by and between the CITY OF PALM SPRINGS, a municipal corporation and charter city ("City"), and RBD Hotel Palm Springs LLC, a Delaware limited liability company ("Owner").

RECITALS:

A. The City of Palm Springs adopted Chapter 5.26 of its Municipal Code in December, 2007 to provide a Hotel Operations Incentive Program ("Program") for the operation and maintenance of Hotel facilities that enhance the tourist and travel experience for visitors to the City, maximize the use of the City's Convention Center, provide attractive and desirable visitor serving facilities and experiences, and assist the City in achieving its tourism goals.

B. Owner has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a qualified renovation program under the Program. The Hyatt Regency Suites ("Owner's Hotel" or "Project"), generally located at 285 North Palm Canyon Drive, Palm Springs, California, consists of one hundred and ninety-seven (197) total hotel rooms on that certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Site").

C. City and Owner now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a hotel available for short-term rental for the term of this Agreement.

D. City and Owner also agree that in return for participation in the Program, Owner shall agree to operate the Project as a hotel; participate in the Palm Springs Convention Center's Committable Rooms Program; and provide City with a maximum of six (6) room-nights per month for official City use; and, City agrees to share a percentage of Transient Occupancy Tax Increment with Owner pursuant to the Program guidelines.

E. The City finds that the approval of this Covenant is Categorically Exempt from CEQA under Section 15301 of the California Administrative Code as the Hotel Operations Incentive Program applicable to Owner's Hotel applies to the operation, repair, maintenance, or

minor alteration of existing structures, facilities, mechanical equipment involving no material expansion of use beyond that previously existing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Participant hereby conveys to the Agency the Operating Covenants described herein and Agency hereby agrees to provide Participant with funds as provided under the Program and as set forth hereinafter.

ARTICLE 1

STATEMENT OF OPERATING COVENANTS

1.1. OPERATION AND USE COVENANT. Owner covenants to operate, maintain, and use the Owner's Hotel in accordance with this Agreement. All uses conducted on the Site, including, without limitation, all activities undertaken by the Owner pursuant to this Agreement shall conform to requirements of this Agreement and Palm Springs Municipal Code.

1.2. HOTEL USE. The Owner hereby agrees that the Project is to be owned, managed, and operated as a hotel in a first-class manner, and the Project's participation in the Program shall continue in accordance with the terms of the Program, for a term equal to ten (10) years, commencing upon the date Owner first receives from the City the Owner's share of transient occupancy tax revenues pursuant to the Program unless and until Owner's participation in the Program is terminated prior thereto in accordance with this Agreement (the "Term").

1. Housing Uses Prohibited. None of the rooms in the Project will at any time be utilized as a non-transient residential property including dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park without the City's prior consent which consent may be given or withheld in its sole and absolute discretion.

2. Conversion of Project. No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Owner take any steps in connection with the conversion to such ownership or uses to condominiums, or to any other form of ownership, without the prior written approval of the City Council which approval may be given or withheld in its sole and absolute discretion.

ARTICLE 2

WARRANTIES AND COVENANTS

2.1. WARRANTIES AND COVENANTS. For the Term of this Agreement, the Owner hereby represents, covenants, warrants and agrees as follows:

1. Owner has completed the City's application for the Hotel Operations Incentive Program. The City has determined the Transient Occupancy Tax Base to be used to calculate the Transient Occupancy Tax Increment shall be Nine Hundred Eight Thousand Seventy-Eight Dollars and Nineteen Cents (\$908,078.19) and the Owner accepts such Transient Occupancy Tax Base.

2. Owner hereby agrees to subscribe to the Palm Springs Convention Center's Committable Rooms Program or any similar successor program as identified by the City Manager without being obligated to incur any additional costs or expenses.

3. Upon City's prior request, Owner shall provide the City at no cost six (6) rooms for one night (or one or more rooms for a total of six (6) nights) each month for use for City purposes as approved or designated by the City Manager, provided that such use by the City shall be subject to the rooms being available at the time of the City's request. Such accommodations shall include all services and amenities for which the Owner would normally collect transient occupancy taxes but will not include services and amenities that are optional to the transient and for which the transient is not required to pay a transient occupancy taxes. City shall be responsible for any transient occupancy taxes for any occupancy provided to City under the provisions of this paragraph. Notwithstanding anything in this Agreement to the contrary, if the City does not use rooms during any month, then its right to use rooms with respect to that month shall expire at the end of that month and shall not accrue; provided, however, if the City was unable to use rooms because Owner's Hotel had no rooms available when the City requested a room in accordance with this Section 2.1.3, then, the City's right to use rooms shall not expire and may be used by the City in a subsequent month.

ARTICLE 3

MAINTENANCE

3.1. MAINTENANCE.

1. Maintenance Obligation. Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such paving at all times be kept in a level and smooth condition.

2. Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times.

3. Right of Termination. In the event Owner fails to maintain the Site in the above-mentioned condition, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from City (such notice shall reasonably identify the required maintenance), City may, at City's option, and without further notice to Owner, terminate this Agreement.

ARTICLE 4

COMPLIANCE WITH LAWS

4.1. COMPLIANCE WITH LAWS. Owner shall comply with all ordinances, regulations and standards of the City and City applicable to the Site. Owner shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

ARTICLE 5

NONDISCRIMINATION

5.1. NONDISCRIMINATION. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Owner, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of guests or vendees of the Site, or any part thereof.

ARTICLE 6

INDEMNIFICATION

6.1. INDEMNIFICATION. Owner agrees for itself and its successors and assigns to indemnify, defend, and hold harmless City and its respective officers, members, officials, employees, agents, volunteers, and representatives from and against any loss, liability, claim, or judgment relating in any manner to the Project excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of or its respective officers, officials, employees, members, agents, volunteers, or representatives. Owner, while in possession of the Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of property taxes and assessments in connection with the Site. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

6.2. ATTORNEYS' FEES. In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

6.3. AMENDMENTS. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Riverside.

6.4. NOTICE. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

City: City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: City Manager

Copy to: Woodruff, Spradlin & Smart, LLP
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626
Attn: Douglas C. Holland, Esq.

Owner: RBD Hotel Palm Springs LLC
c/o RBC Investment Services LLC
4100 Regent Street, Suite G
Columbus, OH 43221
Attn: Risk Management

Copy to: RBD Hotel Palm Springs LLC
c/o Davidson Hotel Company LLC
3340 Players Club Parkway, Suite 200
Memphis, TN 38125

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

6.5. SEVERABILITY/WAIVER/INTEGRATION

1. Severability. If any provision of this Agreement or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative, or unenforceable, the remainder of the provisions, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; provided, that if any material terms or provisions of these Operating Covenants are rendered invalid, void and/or unenforceable, or due to changes in the law such terms or provisions would materially alter the terms of the transactions contemplated herein, the parties agree to meet and negotiate in good faith to attempt to reform these Operating Covenants to accomplish the intent of the parties.

2. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

3. Integration. This Agreement contains the entire Agreement between the parties and neither party relies on any warranty or representation not contained in this Agreement.

4. Third Parties. No third party beneficiaries are intended, and the only parties who are entitled to enforce the provisions of these Operating Covenants are the Agency, City, Mortgagees, Participant and their respective successors and assigns.

6.6. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

6.7. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

6.8. TERMINATION. Owner may elect to terminate its participation in the Program and this Agreement by providing written notice to the City (a) if the City fails to deliver to Owner any amounts owed to Owner pursuant to the Program within thirty (30) days after Owner's written request for payment or (b) in its sole discretion for any reason during the term of this Agreement.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Owner have executed this Operations Covenant by duly authorized representatives on the date first written hereinabove.

"CITY"

THE CITY OF PALM SPRINGS,
a municipal corporation and charter city

By: _____
David H. Ready
City Manager

ATTEST:

City Clerk

APPROVED BY CITY COUNCIL
Ord 1786 4.6.11 AB227
P5ML Sec. 5.26
Thomas J. Wilson Asst. City Mgr

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

By: _____
Douglas Holland
City Attorney

"OWNER"

RBD HOTEL PALM SPRINGS LLC

By: RBD Palm Springs Holding LLC, its
Sole Member

By: DIG Palm Springs LLC, its Manager

By: *John A. Belden*
Name: John A. Belden
Title: President

[END OF SIGNATURES]

ACKNOWLEDGMENT

Tennessee
State of ~~California~~)
County of Shelby)

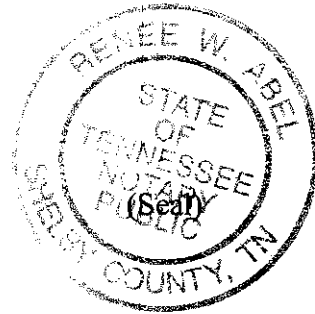
On May 18, 2012, before me, Renee' W Abel,
(insert name of notary)

Notary Public, personally appeared John A. Belden,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ ^{Tennessee} that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Renee' W. Abel
8/22/12



ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

That certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described as:

Exhibit A

PARCEL A:

PARCEL 5 OF PARCEL MAP 20326, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 133, PAGES 81 THROUGH 85 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

NON-EXCLUSIVE ACCESS EASEMENTS AS CONTAINED IN A DOCUMENT ENTITLED "AMENDMENT AND RESTATEMENT OF AMENDED AND RESTATED RECIPROCAL EASEMENT AND OPERATING AGREEMENT", RECORDED DECEMBER 13, 2007 AS INSTRUMENT NO. 07-744406.

APN: 513-560-005-5

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

THE CITY OF PALM SPRINGS
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attention: City Clerk

(Space Above This Line for Recorder's Office Use Only)

OPERATIONS COVENANT ON LEASEHOLD INTEREST

THIS OPERATIONS COVENANT AND DECLARATION OF COVENANTS AND RESTRICTIONS (this "Agreement") is made and entered into this 1st day of June, 2012, by and between the CITY OF PALM SPRINGS, a municipal corporation and charter city (the "City"), and Riviera Reincarnate, LLC, a Delaware limited liability company ("Operator").

RECITALS:

A. The City adopted Chapter 5.26 of its Municipal Code in January, 2008 to provide a Hotel Operations Incentive Program (the "Program") for the operation and maintenance of Hotel facilities that enhance the tourist and travel experience for visitors to the City, maximize the use of the City's Convention Center, provide attractive and desirable visitor serving facilities and experiences, and assist the City in achieving its tourism goals.

B. Operator has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a "Qualified Renovation Program" under the Program. Operator is the owner of the Riviera Hotel ("Operator's Hotel" or the "Project"), consisting of approximately four hundred and six (406) total hotel rooms, and is the Owner of that certain real property generally located at 1600 North Indian Canyon Drive in the City of Palm Springs, County of Riverside, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Site").

C. City and Operator now desire to place restrictions upon the use and operation of the Project and the Operator's leasehold interest, in order to ensure that the Project shall be operated continuously as a hotel available for short-term rental for the term of this Agreement.

D. City and Operator also agree that in return for participation in the Program, Operator shall agree to operate the Project as a hotel; participate in the Palm Springs Convention Center's Committable Rooms Program; and provide City with up to eight (8) room-nights per month for official City use; and, City agrees to share a percentage of Transient Occupancy Tax Increment with Operator pursuant to the Program guidelines.

E. The City finds that the approval of this Agreement is categorically exempt from CEQA under Section 15301 of the California Administrative Code as the Hotel Operations Incentive Program applicable to Operator's Hotel applies to the operation, repair, maintenance, or

minor alteration of existing structures, facilities, mechanical equipment involving no material expansion of use beyond that previously existing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Operator hereby commits to the City to undertake the covenants described herein (the "Operating Covenants") and the City hereby agrees to provide the Operator with funds as provided under the Program and as set forth hereinafter.

ARTICLE 1

STATEMENT OF OPERATING COVENANTS

1.1. OPERATION AND USE COVENANT. Operator covenants to operate, maintain, and use the Operator's Hotel in accordance with this Agreement. All uses conducted on the Site, including, without limitation, all activities undertaken by the Operator pursuant to this Agreement, shall conform to requirements of this Agreement and the Program.

1.2. HOTEL USE. The Operator hereby agrees that the Project is to be owned, managed, and operated as a hotel in a first-class manner, and the Project's participation in the Program shall continue in accordance with the terms of the Program, for a term equal to ten (10) years, commencing upon the date Operator first receives from the City the Operator's share of transient occupancy tax revenues pursuant to the Program, unless and until Operator's participation in the Program is terminated prior thereto in accordance with this Agreement (the "Term").

1. Housing Uses Prohibited. None of the rooms in the Project will at any time be utilized as a non-transient residential property including dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park without the City's prior consent, which consent may be given or withheld in its sole and absolute discretion.

2. Conversion of Project. No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Operator take any steps in connection with the conversion to cooperative housing or condominium ownership, or to any other similar form of ownership, without the prior written approval of the City Council, which approval may be given or withheld in its sole and absolute discretion.

ARTICLE 2

WARRANTIES AND COVENANTS

2.1. WARRANTIES AND COVENANTS. For the Term of this Agreement, the Operator hereby represents, covenants, warrants and agrees as follows:

1. Operator has completed the City's application for the Program. The City has determined that the Transient Occupancy Tax Base to be used to calculate the Transient Occupancy Tax Increment shall be [_____]
(\$_____) and the Operator accepts such Transient Occupancy Tax Base.

2. Operator hereby agrees to subscribe to the Palm Springs Convention Center's Committable Rooms Program or any similar successor program as identified by the City Manager without being obligated to incur any additional costs or expenses.

3. Upon the City's prior request, Operator shall provide the City at no cost up to eight (8) rooms for one night (or one or more rooms for a total of eight (8) room-nights) each month for use for City purposes as approved or designated by the City Manager, provided that such use by the City shall be subject to the rooms being available at the time of the City's request. Such accommodations shall include all services and amenities for which the Operator would normally collect transient occupancy taxes but will not include services and amenities that are optional to transient guests and for which transient guests are not required to pay transient occupancy taxes. City shall be responsible for any transient occupancy taxes for any occupancy provided to City under the provisions of this paragraph. Notwithstanding anything in this Agreement to the contrary, if the City does not use rooms during any month, then its right to use rooms with respect to that month shall expire at the end of that month and shall not accrue; provided, however, if the City was unable to use rooms because Operator's Hotel had no rooms available when the City requested a room in accordance with this Section 2.1.3, then the City's right to use rooms shall not expire and may be used by the City in a subsequent month.

ARTICLE 3

MAINTENANCE

3.1. MAINTENANCE.

1. Maintenance Obligation. Operator, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls, in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Operator's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such paving at all times be kept in a level and smooth condition.

2. Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times.

3. Right of Termination. In the event Operator fails to maintain the Site in the above-mentioned condition, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from City (which notice

shall reasonably identify the required maintenance), City may, at City's option, and upon notice to Operator, terminate this Agreement.

ARTICLE 4

COMPLIANCE WITH LAWS

4.1. COMPLIANCE WITH LAWS. Operator shall comply with all ordinances, regulations and standards of the City applicable to the Site. Operator shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

ARTICLE 5

NONDISCRIMINATION

5.1. NONDISCRIMINATION. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Operator, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of guests or vendees of the Site, or any part thereof.

ARTICLE 6

INDEMNIFICATION

6.1. INDEMNIFICATION. Operator agrees for itself and its successors and assigns to indemnify, defend, and hold harmless City and its respective officers, members, officials, employees, agents, volunteers, and representatives from and against any loss, liability, claim, or judgment relating in any manner to the Project, excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of the City or its respective officers, officials, employees, members, agents, volunteers, or representatives. Operator, while in possession of the Site, and each successor or assign of Operator while in possession of the Site, shall remain fully obligated for the payment of property taxes and assessments in connection with the Site. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

6.2. ATTORNEYS' FEES. In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other party reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

6.3. AMENDMENTS. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Riverside.

6.4. NOTICE. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, recognized overnight courier, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

City: City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: City Manager

Copy to: City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: City Attorney

Operator: Noble House Hotels & Resorts
Attn: Vice President of Finance & Audit
600 6th Street South
Kirkland, WA 98033

The notice shall be deemed given three (3) business days after the date of mailing, one (1) business day after sending by recognized overnight courier, or, if personally delivered, when received (or receipt is denied).

6.5. SEVERABILITY/WAIVER/INTEGRATION

1. Severability. If any provision of this Agreement or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative, or unenforceable, the remainder of the provisions, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; provided, that if any material terms or provisions of the Operating Covenants are rendered invalid, void and/or unenforceable, or changes in the law would materially alter the terms of the transactions contemplated herein, the parties agree to meet and negotiate in good faith to attempt to reform the Operating Covenants to accomplish the intent of the parties.

2. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

3. Integration. This Agreement contains the entire agreement between the parties and neither party relies on any warranty or representation not contained in this Agreement.

4. Third Parties. No third party beneficiaries are intended, and the only parties who are entitled to enforce the provisions of this Agreement are the City, any mortgagees that may succeed to Operator's leasehold interest under the ground lease between Operator and fee owner of the Site or a replacement thereof, Operator and each of their respective successors and assigns.

6.6. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

6.7. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

6.8. TERMINATION. The City may elect to terminate this Agreement pursuant to Section 3.1.3 hereof. Operator may elect to terminate its participation in the Program and this Agreement by providing written notice to the City (a) if the City fails to deliver to Operator any amounts owed to Operator pursuant to the Program within thirty (30) days after Operator's written request for payment or (b) in its sole discretion for any reason during the term of this Agreement. In the event of any early termination of this Agreement, Operator (or its successor, as applicable) shall not be obligated to return any amounts previously paid to it by the City pursuant to the Program.

6.9. OPERATIONS COVENANT LIMITED TO LEASEHOLD INTEREST. The restrictions, obligations, covenants, and benefits of this Agreement only apply to the Operator and the Operator's leasehold interest in the Site and do not apply to or burden in any way the fee owner's interest in the Site.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Operator have executed this Agreement by duly authorized representatives on the date first written hereinabove.

"CITY"

THE CITY OF PALM SPRINGS,
a municipal corporation and charter city

By: _____
David H. Ready
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

By: _____
Douglas Holland
City Attorney

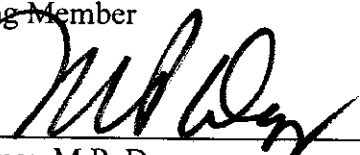
"OPERATOR"

RIVIERA REINCARNATE, LLC
a Delaware limited liability company

By: RECP/ Noble House Riviera Venture,
LLC, its Sole Member

By: Westgroup Riviera, LLC, its Managing
Member

By: Noble House Associates, LLC, its
Managing Member

By:  _____
Name: M.P. Dyer
Title: General Counsel

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

State of Washington)
County of King)

On MAY 22, 2012, before me, DONNA J. MACKNER,
(insert name of notary)

Notary Public, personally appeared M. P. DYER,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Donna J. Mackner

(Seal)

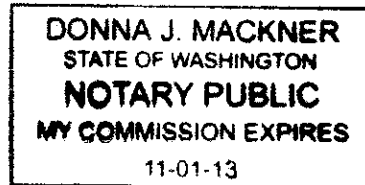


EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

That certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described as:

THE SOUTH 521 FEET OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN.

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

THE CITY OF PALM SPRINGS
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attention: City Clerk

(Space Above This Line for Recorder's Office Use Only)

OPERATIONS COVENANT ON LEASEHOLD INTEREST

AB039

THIS OPERATIONS COVENANT AND DECLARATION OF COVENANTS AND RESTRICTIONS (this "Agreement") is made and entered into this 1st day of May, 2012, by and between the CITY OF PALM SPRINGS, a municipal corporation and charter city (the "City"), and Sydell Palm Springs LLC, a Delaware limited liability company ("Operator").

RECITALS:

A. The City adopted Chapter 5.26 of its Municipal Code in January, 2008 to provide a Hotel Operations Incentive Program (the "Program") for the operation and maintenance of Hotel facilities that enhance the tourist and travel experience for visitors to the City, maximize the use of the City's Convention Center, provide attractive and desirable visitor serving facilities and experiences, and assist the City in achieving its tourism goals.

B. Operator has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a "Qualified Renovation Program" under the Program. Operator is the owner of the Saguaro Palm Springs ("Operator's Hotel" or the "Project"), consisting of approximately two hundred forty-five (245) total hotel rooms, and is the Lessee of that certain real property generally located at 1800 East Palm Canyon Drive in the City of Palm Springs, County of Riverside, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Site").

C. City and Operator now desire to place restrictions upon the use and operation of the Project and the Operator's leasehold interest, in order to ensure that the Project shall be operated continuously as a hotel available for short-term rental for the term of this Agreement.

D. City and Operator also agree that in return for participation in the Program, Operator shall agree to operate the Project as a hotel; participate in the Palm Springs Convention Center's Committable Rooms Program; and provide City with up to six (6) room-nights per month for official City use; and, City agrees to share a percentage of Transient Occupancy Tax Increment with Operator pursuant to the Program guidelines.

E. The City finds that the approval of this Agreement is categorically exempt from CEQA under Section 15301 of the California Administrative Code as the Hotel Operations Incentive Program applicable to Operator's Hotel applies to the operation, repair, maintenance, or

minor alteration of existing structures, facilities, mechanical equipment involving no material expansion of use beyond that previously existing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Operator hereby commits to the City to undertake the covenants described herein (the "Operating Covenants") and the City hereby agrees to provide the Operator with funds as provided under the Program and as set forth hereinafter.

ARTICLE 1

STATEMENT OF OPERATING COVENANTS

1.1. OPERATION AND USE COVENANT. Operator covenants to operate, maintain, and use the Operator's Hotel in accordance with this Agreement. All uses conducted on the Site, including, without limitation, all activities undertaken by the Operator pursuant to this Agreement, shall conform to requirements of this Agreement and the Program.

1.2. HOTEL USE. The Operator hereby agrees that the Project is to be owned, managed, and operated as a hotel in a first-class manner, and the Project's participation in the Program shall continue in accordance with the terms of the Program, for a term equal to ten (10) years, commencing upon the date Operator first receives from the City the Operator's share of transient occupancy tax revenues pursuant to the Program, unless and until Operator's participation in the Program is terminated prior thereto in accordance with this Agreement (the "Term").

1. Housing Uses Prohibited. None of the rooms in the Project will at any time be utilized as a non-transient residential property including dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park without the City's prior consent, which consent may be given or withheld in its sole and absolute discretion.

2. Conversion of Project. No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Operator take any steps in connection with the conversion to cooperative housing or condominium ownership, or to any other similar form of ownership, without the prior written approval of the City Council, which approval may be given or withheld in its sole and absolute discretion.

ARTICLE 2

WARRANTIES AND COVENANTS

2.1. WARRANTIES AND COVENANTS. For the Term of this Agreement, the Operator hereby represents, covenants, warrants and agrees as follows:

1. Operator has completed the City's application for the Program. The City has determined that the Transient Occupancy Tax Base to be used to calculate the Transient Occupancy Tax Increment shall be four hundred forty-five thousand, nine

hundred ninety-eight dollars (\$445,998.00) and the Operator accepts such Transient Occupancy Tax Base.

2. Operator hereby agrees to subscribe to the Palm Springs Convention Center's Committable Rooms Program or any similar successor program as identified by the City Manager without being obligated to incur any additional costs or expenses.

3. Upon the City's prior request, Operator shall provide the City at no cost up to six (6) rooms for one night (or one or more rooms for a total of six (6) room-nights) each month for use for City purposes as approved or designated by the City Manager, provided that such use by the City shall be subject to the rooms being available at the time of the City's request. Such accommodations shall include all services and amenities for which the Operator would normally collect transient occupancy taxes but will not include services and amenities that are optional to transient guests and for which transient guests are not required to pay transient occupancy taxes. City shall be responsible for any transient occupancy taxes for any occupancy provided to City under the provisions of this paragraph. Notwithstanding anything in this Agreement to the contrary, if the City does not use rooms during any month, then its right to use rooms with respect to that month shall expire at the end of that month and shall not accrue; provided, however, if the City was unable to use rooms because Operator's Hotel had no rooms available when the City requested a room in accordance with this Section 2.1.3, then the City's right to use rooms shall not expire and may be used by the City in a subsequent month.

ARTICLE 3

MAINTENANCE

3.1. MAINTENANCE.

1. Maintenance Obligation. Operator, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls, in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Operator's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such paving at all times be kept in a level and smooth condition.

2. Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times.

3. Right of Termination. In the event Operator fails to maintain the Site in the above-mentioned condition, and satisfactory progress is not made in correcting the

condition within thirty (30) days from the date of written notice from City (which notice shall reasonably identify the required maintenance), City may, at City's option, and upon notice to Operator, terminate this Agreement.

ARTICLE 4

COMPLIANCE WITH LAWS

4.1. COMPLIANCE WITH LAWS. Operator shall comply with all ordinances, regulations and standards of the City applicable to the Site. Operator shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

ARTICLE 5

NONDISCRIMINATION

5.1. NONDISCRIMINATION. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Operator, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of guests or vendees of the Site, or any part thereof.

ARTICLE 6

INDEMNIFICATION

6.1. INDEMNIFICATION. Operator agrees for itself and its successors and assigns to indemnify, defend, and hold harmless City and its respective officers, members, officials, employees, agents, volunteers, and representatives from and against any loss, liability, claim, or judgment relating in any manner to the Project, excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of the City or its respective officers, officials, employees, members, agents, volunteers, or representatives. Operator, while in possession of the Site, and each successor or assign of Operator while in possession of the Site, shall remain fully obligated for the payment of property taxes and assessments in connection with the Site. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

6.2. ATTORNEYS' FEES. In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other party reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

6.3. AMENDMENTS. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Riverside.

6.4. NOTICE. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, recognized overnight courier, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

City: City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: City Manager

Copy to: Woodruff, Spradlin & Smart, LLP
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626
Attn: Douglas C. Holland, Esq.

Operator: Sydell Palm Springs LLC
c/o Sydell Group Ltd.
30 West 26th Street, 12th Floor
New York, NY 10010
Attn: General Counsel

The notice shall be deemed given three (3) business days after the date of mailing, one (1) business day after sending by recognized overnight courier, or, if personally delivered, when received (or receipt is denied).

6.5. SEVERABILITY/WAIVER/INTEGRATION

1. Severability. If any provision of this Agreement or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative, or unenforceable, the remainder of the provisions, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; provided, that if any material terms or provisions of the Operating Covenants are rendered invalid, void and/or unenforceable, or changes in the law would materially alter the terms of the transactions contemplated herein, the parties agree to meet and negotiate in good faith to attempt to reform the Operating Covenants to accomplish the intent of the parties.

2. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

3. Integration. This Agreement contains the entire agreement between the parties and neither party relies on any warranty or representation not contained in this Agreement.

4. Third Parties. No third party beneficiaries are intended, and the only parties who are entitled to enforce the provisions of this Agreement are the City, any mortgagees that may succeed to Operator's leasehold interest under the ground lease between Operator and fee owner of the Site or a replacement thereof, Operator and each of their respective successors and assigns.

6.6. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

6.7. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

6.8. TERMINATION. The City may elect to terminate this Agreement pursuant to Section 3.1.3 hereof. Operator may elect to terminate its participation in the Program and this Agreement by providing written notice to the City (a) if the City fails to deliver to Operator any amounts owed to Operator pursuant to the Program within thirty (30) days after Operator's written request for payment or (b) in its sole discretion for any reason during the term of this Agreement. In the event of any early termination of this Agreement, Operator (or its successor, as applicable) shall not be obligated to return any amounts previously paid to it by the City pursuant to the Program.

6.9. OPERATIONS COVENANT LIMITED TO LEASEHOLD INTEREST. The restrictions, obligations, covenants, and benefits of this Agreement only apply to the Operator and the Operator's leasehold interest in the Site and do not apply to or burden in any way the fee owner's interest in the Site.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Operator have executed this Agreement by duly authorized representatives on the date first written hereinabove.

"CITY"

THE CITY OF PALM SPRINGS,
a municipal corporation and charter city

By: _____
David H. Ready
City Manager

ATTEST:

City Clerk

APPROVED BY CITY COUNCIL

Ord 1786 4.6.11 A6239
PSML 5LL. 5.26
Thomas J. Wilson Act. City Mgr

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

By: _____
Douglas Holland
City Attorney

"OPERATOR"

SYDELL PALM SPRINGS LLC,
a Delaware limited liability company

By: _____
Name: Joshua Babbitt
Title: Vice President

[END OF SIGNATURES]

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of ~~California~~ NY)
County of NY)

On May 9, 2013, before me, Lauren P. Schmauch,
(insert name of notary)

Notary Public, personally appeared Joshua Babbitt,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lauren P. Schmauch (Seal)

LAUREN P. SCHMAUCH
NOTARY PUBLIC State of New York
No. 01SC5031836
Qualified in Queens County
Commission Expires 5/13/2014

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

That certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described as:

THE SOUTH 521 FEET OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN.